

AMENDED IN SENATE JUNE 16, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1774

**Introduced by Committee on Banking and Finance (Wiggins
(Chair), Calderon, Chan, Chavez, Correa, Montanez, and
Vargas)**

March 13, 2003

An act to amend Sections 261, 772, 1500, 1560, 1808, 1900, 3375.5, 4839, 4843, 4946, 8152, 14250, 14354, 16151, 16701, 31507, and 33903 of, to amend and renumber Sections 4879.12, 4879.13, and 4879.135 of, and to repeal Section 8012 of, the Financial Code, relating to financial institutions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1774, as amended, Committee on Banking and Finance. Financial institutions.

Existing law provides for regulation and licensure of various financial institutions and providers of financial services by the Commissioner of Financial Institutions, including banks, depository corporations, savings associations, credit unions, business and industrial development corporations, and transmitters of money abroad. Existing law authorizes the commissioner to examine these licensed entities at any time. Existing law authorizes the commissioner to deliver fingerprints taken of an applicant for employment, or a director, officer, or employee of specified financial institutions to state or federal law enforcement agencies to check for a criminal record. Existing law authorizes banks and trust companies to make specified investments.

This bill would revise the provisions authorizing the commissioner to examine banks, depository corporations, savings associations, credit unions, business and industrial development corporations, and transmitters of money abroad. The bill would authorize the commissioner to examine any office of these entities whether the offices are within or outside of this state. The bill would authorize the commissioner to deliver fingerprints taken of an applicant for employment, or a director, officer, or employee of these entities, or a controlling person, as defined, or an affiliate of these entities, including entities that are proposed but not yet in existence, to state or federal law enforcement agencies to check for a criminal record. The bill would revise the provisions authorizing banks and trust companies to make investments.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 261 of the Financial Code is amended
2 to read:
3 261. (a) For the purposes of this section the following
4 definitions shall apply:
5 (1) “Control” has the same meaning set forth in subdivision (b)
6 of Section 700.
7 (2) “Controlling person” means a person who, directly or
8 indirectly, controls a financial institution.
9 (3) “Financial institution” means any of the following:
10 (A) A commercial bank, industrial bank, trust company,
11 savings association, or credit union incorporated under the laws of
12 this state.
13 (B) A person licensed by the commissioner under Chapter 14
14 (commencing with Section 1800) to receive money for
15 transmission to foreign countries.
16 (C) A person authorized by the commissioner pursuant to
17 Section 1803 to act as an agent of a person licensed by the
18 commissioner to receive money for transmission to foreign
19 countries.
20 (D) A person licensed by the commissioner pursuant to
21 Division 7 (commencing with Section 18000) to transact business
22 as a premium finance agency.



1 (E) A person licensed by the commissioner pursuant to
2 Division 15 (commencing with Section 31000) to transact
3 business as a business and industrial development corporation.

4 (F) A person licensed by the commissioner pursuant to
5 Division 16 (commencing with Section 33000) to engage in the
6 business of selling payment instruments in this state issued by the
7 licensee.

8 (G) A corporation incorporated under the laws of this state for
9 the purpose of engaging in, or that is authorized by the
10 commissioner to engage in, business pursuant to Article 1
11 (commencing with Section 3500) of Chapter 19.

12 (H) A foreign corporation that is licensed by the commissioner
13 pursuant to Article 1 (commencing with Section 3500) of Chapter
14 19 to maintain an office in this state and to transact at that office
15 business pursuant to Article 1 (commencing with Section 3500) of
16 Chapter 19.

17 (b) Notwithstanding any other provision of law, the
18 commissioner may deliver fingerprints taken of an applicant for
19 employment, or a director, officer, or employee of an existing or
20 proposed financial institution, and existing or proposed
21 controlling person of a financial institution, or an existing or
22 proposed affiliate of a financial institution to local, state, or federal
23 law enforcement agencies for the purpose of obtaining
24 information as to the existence and nature of a criminal record, if
25 any, of that person relating to convictions, and to any arrest for
26 which the person is released on bail or on his or her own
27 recognizance pending trial, for the commission or attempted
28 commission of a crime involving robbery, burglary, theft,
29 embezzlement, fraud, forgery, bookmaking, receiving stolen
30 property, counterfeiting, or involving checks or credit cards or
31 using computers.

32 (c) No request shall be submitted pursuant to this section
33 without the written consent of the person affected.

34 (d) Any criminal history information obtained pursuant to this
35 section shall be confidential and no recipient shall disclose its
36 contents other than for the purpose for which it was acquired.

37 SEC. 2. Section 772 of the Financial Code is amended to read:
38 772. Notwithstanding the provisions of Section 1335, and
39 subject to ~~such~~ regulations and rules as the commissioner may
40 prescribe, a bank may invest in equity, debt, or other securities of

1 one or more corporations, limited liability corporations, limited
2 liability companies, limited partnerships, limited liability
3 partnerships, or other similar business organizations.

4 Any reference to “corporation” in regulations adopted by the
5 commissioner to implement this section shall be deemed to include
6 limited liability corporations, limited liability companies, limited
7 partnerships, limited liability partnerships, or other similar
8 business organizations.

9 SEC. 3. Section 1500 of the Financial Code is amended to
10 read:

11 1500. No corporation shall engage in the trust business unless:

12 (a) Its articles comply with the requirements of subdivision (b),
13 (d), or (e) of Section 600; and

14 (b) It has received from the commissioner a certificate of
15 authority pursuant to Section 401 to engage in the trust business,
16 or, if it is a bank, has received the authorization of the
17 commissioner to engage in the trust business pursuant to Section
18 1500.1; and

19 (c) It has deposited with the State Treasurer money or securities
20 in compliance with Article 3 (commencing with Section 1540) of
21 this chapter.

22 SEC. 4. Section 1560 of the Financial Code is amended to
23 read:

24 1560. A trust company may invest its contributed capital only
25 in the securities and properties in which a commercial bank is
26 permitted to invest its funds pursuant to Sections 1000 to 1018,
27 inclusive, and in loans on real property which commercial banks
28 are permitted to make pursuant to Article 2 (commencing with
29 Section 1220) of Chapter 10.

30 SEC. 5. Section 1808 of the Financial Code is amended to
31 read:

32 1808. (a) The commissioner may at any time and from time
33 to time examine the business and any office, within or outside this
34 state, of any licensee or any agent of a licensee in order to ascertain
35 whether that business is being conducted in a lawful manner and
36 whether all moneys received for transmission are properly
37 accounted for.

38 (b) The directors, officers, and employees of a licensee or agent
39 of a licensee being examined by the commissioner shall exhibit to
40 the commissioner, on request, any or all of the licensee’s accounts,

books, correspondence, memoranda, papers, and other records and shall otherwise facilitate the examination so far as it may be in their power to do so.

SEC. 6. Section 1900 of the Financial Code is amended to read:

1900. (a) (1) For purposes of this subdivision, an examination made by the commissioner in conjunction with or with assistance from a bank regulatory agency of the United States, of a state of the United States, or of a foreign nation is deemed to be an examination caused by the commissioner.

(2) No provision of this subdivision shall be deemed to require that the commissioner cause an examination to be made onsite at the offices of a bank.

(3) The commissioner shall cause every California state bank, every California state trust company, and the business in this state of every foreign (other nation) bank licensed under Article 3 (commencing with Section 1750) of Chapter 13.5 to be examined to the extent and whenever and as often as the commissioner shall deem it advisable, but in no case less than once every two calendar years.

(b) The commissioner may at any time examine any of the following:

(1) Any office of a bank organized under the laws of this state.

(2) Any office of a foreign (other state) bank that maintains an office in this state.

(3) Any office of a foreign (other nation) bank that maintains an office in this state.

(c) The officers and employees of every California state bank, California state trust company, and foreign bank being examined shall exhibit to the examiners, on request, any or all of its securities, books, records, and accounts and shall otherwise facilitate the examination so far as it may be in their power.

SEC. 7. *Section 3375.5 of the Financial Code is amended to read:*

3375.5. A bank may make a loan, otherwise complying with the provisions of this division, for the benefit of a trust, notwithstanding that the bank or any one or more executive officers or directors of the bank are trustees of the trust, ~~provided that no executive officer or director of the bank is a beneficiary of the trust.~~

1 SEC. 8. Section 4839 of the Financial Code is amended to
2 read:

3 4839. Fees shall be paid to, and collected by, the
4 commissioner, as follows:

5 (a) The fee for filing an application for approval of a sale under
6 this division shall be two thousand five hundred dollars (\$2,500).

7 (b) The fee for filing an application for approval of a merger
8 under this division shall be two thousand five hundred dollars
9 (\$2,500).

10 (c) (1) The fee for filing an application for approval of a
11 conversion under this division shall be five thousand dollars
12 (\$5,000).

13 (2) The fee for issuing a certificate of authority or license under
14 subdivision (a) of Section 4928 or subdivision (a) of Section 4948
15 shall be two thousand five hundred dollars (\$2,500).

16 (d) The fee for issuing a certificate of authority or license under
17 any other provision of this division shall be twenty-five dollars
18 (\$25).

19 (e) The fee for issuing a certificate under Section 4862,
20 4879.17, 4891, 4930, or 4952 shall be twenty-five dollars (\$25).

21 (f) In case the commissioner makes an examination in
22 connection with a pending application, as described in paragraph
23 (1), (2), (3), (4), (5), or (6) the applicant shall pay a fee for the
24 examination in the sum of seventy-five dollars (\$75) per hour for
25 each examiner engaged in the examination plus, if in the opinion
26 of the commissioner it is necessary for any examiner engaged in
27 the examination to travel outside this state, the travel expenses of
28 the examiner.

29 (1) Examination of the selling depository corporation in
30 connection with a pending application for approval of a sale of a
31 whole business unit (as defined in Section 4840) under Article 2
32 (commencing with Section 4845) of Chapter 3.

33 (2) Examination of the partial business unit (as defined in
34 Section 4840) to be sold and any related affairs of the selling
35 depository corporation in connection with a pending application
36 for approval of a sale of a partial business unit (as defined in
37 Section 4840) under Article 2 (commencing with Section 4845) of
38 Chapter 3.

39 (3) Examination of the purchasing depository corporation in
40 connection with a pending application for approval of a sale of a

1 whole business unit (as defined in Section 4880) under Article 3.5
2 (commencing with Section 4876.01) of Chapter 3 or of a partial
3 business unit (as defined in Section 4880) under Article 4.5
4 (commencing with Section 4878.01) of Chapter 3.

5 (4) Examination of the surviving depository corporation in
6 connection with a pending application for approval of a merger
7 under Article 4 (commencing with Section 4908.01) of Chapter 4.

8 (5) Examination of the disappearing depository corporation in
9 connection with a pending application for approval of a merger
10 under Article 1 (commencing with Section 4880) or Article 2
11 (commencing with Section 4895.01) of Chapter 4.

12 (6) Examination of the converting depository corporation in
13 connection with a pending application for approval of a
14 conversion under Article 1 (commencing with Section 4920) or
15 Article 2 (commencing with Section 4940) of Chapter 5.

16 ~~SEC. 8.~~

17 *SEC. 9.* Section 4843 of the Financial Code is amended to
18 read:

19 4843. In case a national banking association or federal savings
20 association that is authorized to transact trust business in this state
21 sells a partial business unit located in this state of the type
22 described in paragraph (1) or subparagraph (A) or (B) of paragraph
23 (2) of subdivision (e) of Section 4840 to a national banking
24 association or federal savings association pursuant to federal law,
25 the sale shall:

26 (a) Have the same effect as provided in subdivision (e) of
27 Section 4879.14 in the case of a sale of the type defined in Section
28 4879.01.

29 (b) Be subject to the provisions of Section 4842.

30 ~~SEC. 9.~~

31 *SEC. 10.* Section 4879.12 of the Financial Code is amended
32 and renumbered to read:

33 4879.11. After an application for approval of a sale has been
34 approved by the commissioner and all conditions precedent to the
35 sale have been fulfilled, the commissioner shall approve the
36 agreement of sale and endorse the approval on the original or a
37 copy of the agreement of sale, and at that time the sale shall become
38 effective for all purposes.

39 ~~SEC. 10.~~

1 *SEC. 11.* Section 4879.13 of the Financial Code is amended
2 and renumbered to read:

3 4879.12. When a sale becomes effective, in case the purchaser
4 is a California state depository corporation or California
5 state-licensed foreign (other nation) bank:

6 (a) Unless the purchaser provided otherwise in the application
7 for approval of the sale or unless the commissioner provided
8 otherwise in the approval of the application:

9 (1) The purchaser may establish equivalent offices at any
10 branch offices, places of business, extensions of offices, and other
11 facilities of the seller transferred in the sale.

12 (2) If the seller was authorized to transact trust business and if
13 the partial business unit sold includes any trust business, the
14 purchaser, if it is a California state bank or savings association,
15 may transact trust business.

16 (b) The commissioner shall issue to the purchaser certificates
17 of authority, licenses, and other authorizations as may be necessary
18 to carry out the provisions of subdivision (a).

19 ~~SEC. 11.~~

20 *SEC. 12.* Section 4879.135 of the Financial Code is amended
21 and renumbered to read:

22 4879.13. In case a seller is a California state commercial bank
23 and sells all of its trust business in a sale:

24 (a) As of the time when the sale becomes effective, the
25 commissioner shall issue to the seller certificates of authority
26 authorizing it to transact commercial banking business in
27 replacement of the certificates of authority that the seller is
28 required to surrender pursuant to subdivision (b).

29 (b) Promptly after the sale becomes effective, the seller shall
30 surrender to the commissioner for cancellation its certificates of
31 authority authorizing it to transact commercial banking business
32 and trust business.

33 ~~SEC. 12.~~

34 *SEC. 13.* Section 4946 of the Financial Code is amended to
35 read:

36 4946. After an application for approval of a conversion has
37 been approved by the commissioner but before the conversion
38 becomes effective, the converting depository corporation shall file
39 with the commissioner an application for approval of the articles
40 of the resulting depository corporation. When the commissioner

1 approves the articles, the commissioner shall endorse the approval
2 on the articles. After the articles are filed with the Secretary of
3 State, the resulting depository corporation shall file with the
4 commissioner a copy of the articles certified by the Secretary of
5 State.

6 ~~SEC. 13.~~

7 *SEC. 14.* Section 8012 of the Financial Code is repealed.

8 ~~SEC. 14.~~

9 *SEC. 15.* Section 8152 of the Financial Code is amended to
10 read:

11 8152. From time to time the commissioner may, without
12 previous notice, examine or cause an examination to be made into
13 the affairs of each association, and any office of the association
14 within or outside this state, savings and loan holding company and
15 subsidiary of any association or savings and loan holding company
16 subject to this division.

17 ~~SEC. 15.~~

18 *SEC. 16.* Section 14250 of the Financial Code is amended to
19 read:

20 14250. (a) (1) The commissioner may at any time
21 investigate into the affairs and examine the books, accounts,
22 records, files, and any office within or outside of this state used in
23 the business of every credit union, whether it acts or claims to act
24 under or without authority of this division.

25 (2) The commissioner and the commissioner's duly designated
26 representatives shall have free access to the offices and places of
27 business, books, accounts, papers, records, files, safes, and vaults
28 of every credit union referred to in paragraph (1).

29 (b) (1) The commissioner shall examine every credit union
30 organized under the laws of this state to the extent and whenever
31 and as often as the commissioner shall deem it advisable, but in no
32 case less than once every two years.

33 (2) For purposes of this subdivision, an examination made by
34 the commissioner in conjunction with or with assistance from the
35 National Credit Union Administration or a credit union regulatory
36 agency of another state of the United States is deemed to be an
37 examination made by the commissioner.

38 (3) No provision of this subdivision shall be deemed to require
39 that the commissioner make an examination onsite at the offices
40 of a credit union.

1 ~~SEC. 16.~~

2 *SEC. 17.* Section 14354 of the Financial Code is amended to
3 read:

4 14354. There is established the Credit Union Fund in the State
5 Treasury.

6 ~~SEC. 17.~~

7 *SEC. 18.* Section 16151 of the Financial Code is amended to
8 read:

9 16151. The commissioner may make any examination of a
10 foreign (other state) credit union at any office of the commissioner.
11 The commissioner may make an examination of any office, within
12 or outside of this state, of a foreign (other state) credit union that
13 maintains an office in this state.

14 ~~SEC. 18.~~

15 *SEC. 19.* Section 16701 of the Financial Code is amended to
16 read:

17 16701. The commissioner may make an examination of a
18 foreign (other nation) credit union at any office of the
19 commissioner. The commissioner may make an examination of
20 any office, within or outside of this state, of a foreign (other nation)
21 credit union that maintains an office in this state.

22 ~~SEC. 19.~~

23 *SEC. 20.* Section 31507 of the Financial Code is amended to
24 read:

25 31507. (a) The commissioner shall examine each licensee
26 not less frequently than once each calendar year.

27 (b) (1) The commissioner may at any time examine any
28 licensee or any parent or subsidiary of a licensee.

29 (2) The commissioner may at any time examine any office of
30 any licensee within or outside of this state.

31 (3) The commissioner may at any time examine any affiliate of
32 a licensee (other than a parent or subsidiary of the licensee) but
33 only with respect to matters relating to transactions between the
34 affiliate and the licensee.

35 (c) The directors, officers, and employees of any licensee or of
36 any affiliate of a licensee being examined by the commissioner and
37 any other person having custody of any of the books, accounts, or
38 records of ~~such~~ the licensee or ~~of such~~ affiliate shall exhibit to the
39 commissioner, on request, any or all of the books, accounts, and
40 other records of ~~such~~ the licensee or ~~of such~~ affiliate and shall

otherwise facilitate ~~such the~~ examination so far as it may be in their power to do so. However, in the case of an examination of an affiliate of a licensee other than a parent or subsidiary of the licensee, only books, accounts, and records of the affiliate ~~which that~~ relate to transactions between the affiliate and the licensee shall be subject to this subdivision.

(d) The commissioner may, if in his or her opinion it is necessary in the examination of any licensee or of any affiliate of a licensee, retain any certified public accountant, attorney, appraiser, or other person to assist him or her, and ~~such the~~ licensee shall pay, within 10 days after receipt of a statement from the commissioner, the fees of ~~such that~~ person.

~~SEC. 20.~~

SEC. 21. Section 33903 of the Financial Code is amended to read:

33903. (a) The commissioner may at any time examine any licensee and any office of the licensee within or outside of this state.

(b) In case the commissioner has initiated proceedings to issue, or has issued, an order imposing conditions upon the surrender of the license of a licensee under Section 34001, an order suspending or revoking the license of a licensee under Section 34109 or 34110, or an order taking possession of the property and business of a licensee under Section 34113, the commissioner may examine any California agent of ~~such the~~ licensee with respect to sales by ~~such the~~ agent of payment instruments issued by the licensee and related matters.

(c) Any licensee or California agent of a licensee being examined by the commissioner shall, and each licensee shall use its best efforts to require each of its California agents being examined by the commissioner to, exhibit to the commissioner and permit the commissioner to copy, on request, any or all of the books, accounts, and other records of ~~such the~~ licensee or ~~such the~~ California agent, as the case may be, ~~which that~~ may relate to ~~such the~~ examination, and otherwise facilitate ~~such the~~ examination so far as it may be in its power to do so.

(d) The commissioner may, if in the commissioner's opinion it is necessary in the examination of any licensee or of any California agent of a licensee, retain any certified public accountant, attorney, appraiser, or other person to assist the commissioner, and ~~such the~~

- 1 licensee shall pay, within 10 days after receipt of a statement from
- 2 the commissioner, the fees of ~~such~~ *that* person.

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